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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

MANUEL MONTOYA,

Plaintiff and Appellant,

v.

SAN DIEGO REGION TRANSDEV INC.,

Defendant and Respondent.

D073411

(Super. Ct. No. 37-2016-00007518-
CU-PN-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Gregory W. Pollack, Judge. Affirmed.

Manuel R. Montoya, in pro. per., for Plaintiff and Appellant.

Wheatley Bingham & Baker and Roger P. Bingham for Defendant and Respondent.

After falling on a bus, Manuel Montoya filed a complaint against bus operator Transdev Services, Inc. (Transdev), asserting a single cause of action for negligence. Montoya represented himself at trial. The jury returned a special verdict finding Transdev was not negligent. Montoya appeals from the judgment entered in Transdev's

favor, contending the jury's verdict is not supported by evidence, the trial court erred in denying his request to waive expert witness fees, the trial court made erroneous evidentiary rulings in limine, certain jury instructions and the special verdict form were erroneous and prejudicial, the jury committed misconduct by deliberating for only 14 minutes before delivering a verdict, and the costs award entered against him is "[appalling]" and unfair. We find no error on the limited record before us and therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On February 27, 2015, Montoya boarded a bus operated by Transdev and moved down the aisle toward an open seat. The bus pulled away from the stop before Montoya sat down, and Montoya fell. The incident was captured on video by the bus's "On Board Video Surveillance System" (OBVSS).

Montoya filed a personal injury complaint against Transdev asserting a single cause of action for negligence. He sought compensatory and punitive damages, claiming he suffered hospital and medical expenses, general damages, lost earning capacity, pain and suffering, and bodily injury. Transdev filed a general denial of all claims and asserted various affirmative defenses, including contributory negligence.

Prior to trial, Montoya, who had already obtained an order waiving court fees, filed an additional request seeking "[f]ees for court-appointed experts" because he required the services of an orthopedic doctor "to confirm cause and status, also future of plaintiff[s] medical condition [sic]." The trial court denied this request, indicating the "court does not pay for experts in civil cases."

Transdev filed a "joint" trial readiness conference report, which Montoya declined to sign. That report provided the following description of the case:

"This personal injury lawsuit arises from a bus patron falling on start after boarding [a] San Diego Metropolitan Transit System [b]us . . . on February 27, 2015. . . . [After boarding the bus,] Mr. Montoya stumbled and fell when the bus accelerated from the bus stop in order to resume normal route operations Bus 2831 was being operated by Defendant Transdev Services, Inc. pursuant to a contract service agreement executed with San Diego Metropolitan Transit System. Mr. Montoya contends Transdev was negligent in the operation of Bus 2831 and caused him personal injuries. Transdev denies liability and contends Plaintiff was not injured as a result of the incident."

Montoya filed a separate memorandum providing the following description of "uncontested facts":

"Plaintiff boarded [the bus] at [approximately] 14:45, and [approximately] 10 seconds later was down on the deck of the passageway bumped up against the hardware of the seats on the opposite side of the passageway sustaining injury. [Then] a lady passenger helped me up. All caused by unnecessary over[-] acceleration and [disregard] for the safety of passengers—professional negligence."

Montoya also identified "disputed facts," including "professional negligence," "cause for punitive," "cause of injury," "extent of injury," "aggravated pre-injury," and more.

Transdev filed several motions in limine and a trial brief explaining it intended to show at trial that the bus made a "normal start-from-stop" after all passengers had boarded the bus and the doors were closed, consistent with industry standards which do not require the bus to wait until all passengers are seated. Under industry standards, it is incumbent on passengers to exercise reasonable care for their own safety, including using handrails and stanchions, in anticipation of the inherent movement of the vehicle.

Montoya was solely responsible for any injuries sustained in the fall, due to his failure to exercise reasonable care. Transdev further argued that Montoya had a long history of preexisting, unrelated medical conditions, including a prior disability, and just months before the bus incident, he had been involved in an unrelated car accident, complicating causation and damages issues. Transdev's medical expert concluded that Montoya's injuries were preexisting degenerative conditions, not traumatic conditions caused by the fall. Because of his complicated medical history, Montoya could only establish causation and damages with expert testimony, and his failure to designate medical experts was fatal to his claims. In the absence of expert medical testimony, Montoya should be precluded from presenting evidence to substantiate his injuries were caused by his fall.

Montoya submitted no trial brief and made no motions in limine.

The case proceeded to jury trial in October 2017. Trial proceedings were transcribed by a certified court reporter; however, because Montoya elected to proceed on appeal without a reporter's transcript, this court's only record of proceedings is the trial court's minute orders.¹

On the first day of trial, a jury was empaneled. The court pre-instructed the jury on the law applicable to the case. Both parties presented opening statements. Montoya

¹ When designating the record, Montoya checked the box that indicated he would proceed "WITHOUT a record of the oral proceedings in the superior court. I understand that without a record of the oral proceedings in the superior court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether an error was made in the superior court proceedings."

was sworn as a witness and began testifying on his own behalf until the court adjourned for the day.

On the second day of trial, Montoya resumed his testimony and was cross-examined. Excerpts of OBVSS video footage depicting Montoya's fall were shown to the jury. Montoya called a single percipient witness before resting without calling any expert witnesses as to medical or professional negligence issues.

After jurors were excused for a break, Transdev moved for nonsuit, which was granted as to punitive damages, economic damages, and future noneconomic damages. The court concluded that all that remained for the jury to decide, if liability was found, was the nature and extent of Montoya's past noneconomic damages. Transdev informed the court it would not call its orthopedic surgeon expert witness to testify. Montoya requested to introduce the orthopedic surgeon's report as evidence, but the court denied his request on the basis of hearsay.

When trial reconvened with jurors present, Transdev elicited testimony from its general manager and its person most knowledgeable regarding bus maintenance operations.

During a recess, outside the presence of the jury, the parties had an off-the-record discussion regarding jury instructions. On the record, the court identified the jury instructions to be given. Neither party objected to the instructions nor requested additional instructions.

Trial resumed in the presence of the jury. Transdev presented testimony of a retained expert in public transportation and liability. Montoya cross-examined the expert. The parties presented closing arguments, and the court instructed the jury.²

After deliberating 14 minutes, the jury returned a special verdict finding Transdev was not negligent.

DISCUSSION

I

Sufficiency of the Evidence

In an apparent challenge to the sufficiency of the evidence supporting the verdict, Montoya claims operator negligence was the only proximate cause of his injury. He provides the following description of events, which he claims conclusively establishes Transdev's negligence:

"I crossed the yellow [safety] limit line [C]rossing this line as a passenger, if it is safe, the driver is permitted to start moving, as was the case[.] The bus actually started [moving] . . . [although moving] very slowly[.] This had no effect on myself at that time as I was still not situated and seated. This was still in the scope of common [procedure]. Then to my [surprise] and disbelief . . . the driver announce[d,] "Bus in motion," and . . . the driver created a sudden movement, with a great [acceleration], and in that same second, I ended up with my but[t] on the deck and my back against the seat support hardware of the seat [across] the other side of the [aisle] with great force"

In response, Transdev argues that the absence of an adequate appellate record precludes Montoya from challenging the sufficiency of evidence presented at trial, and,

² The clerk's transcript includes a copy of the instructions provided to the jury.

regardless, the verdict is supported by substantial evidence. We conclude that Montoya's election to proceed without a reporter's transcript precludes him from challenging the sufficiency of the evidence supporting the verdict.

A. Applicable Law

The elements of negligence are " ' a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury." ' " (*Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077, 1083.) " 'The existence of a legal duty to use reasonable care in a particular factual situation is a question of law for the court to decide. [Citation.] However, the elements of breach of that duty and causation are ordinarily questions of fact for the jury's determination.' " (*Phillips v. TLC Plumbing, Inc.* (2009) 172 Cal.App.4th 1133, 1139 (*Phillips*).)

" 'When a trial court's [or a jury's] factual determination is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination, and when two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the [factfinder]. *If such substantial evidence be found, it is of no consequence that the [factfinder] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*'

[Citation.] The substantial evidence standard of review is applicable to appeals from both jury and nonjury trials." (*Jameson v. Five Feet Restaurant, Inc.* (2003) 107 Cal.App.4th 138, 143 (*Five Feet*).)

"It is . . . a fundamental rule of appellate review that an appealed judgment or order is presumed correct. [Citation.] To overcome this presumption, the appellant must provide an adequate appellate record demonstrating error. [Citation.] ' "A necessary corollary to this rule [is] that a record is inadequate . . . if the appellant predicates error only on the part of the record he [or she] provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed." [Citation.]' [Citation.] Where the appellant fails to provide an adequate record of the challenged proceedings, we must presume that the appealed judgment or order is correct, and on that basis, affirm." (*Jade Fashion & Co. Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 643-644 (*Jade Fashion*); *Jameson v. Desta* (2018) 5 Cal.5th 594, 609 (*Jameson*)) [appellant has the burden of providing an adequate appellate record; "[f]ailure to provide an adequate record on an issue requires that the issue be resolved against [the appellant]"]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574 (*Ballard*) ["a party challenging a judgment has the burden of showing reversible error by an adequate record"].) In addition, an appellant must support all factual statements in briefs with citations to the record (Cal. Rules of Court, rule 8.204(a)(1)(C)), and confine statements "to matters in the record" on appeal. (*Id.*, rule 8.204(a)(2)(C).)

B. *Analysis*

The jury concluded Transdev was not negligent. Montoya elected to proceed on appeal without a reporter's transcript, so we have no record of the testimony adduced at trial, including Montoya's own testimony, or the testimony of Transdev's employees and

expert. In the absence of a reporter's transcript of proceedings, we cannot assess the sufficiency of the evidence adduced at trial. We are therefore required to resolve Montoya's evidentiary challenge to the verdict against him because, when the appellate record is inadequate for meaningful review, " 'the appellant defaults and the decision of the trial court should be affirmed.' " (*Jameson, supra*, 5 Cal.5th at p. 609; see *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 ["[b]ecause they failed to furnish an adequate record of the . . . proceedings, defendants' claim must be resolved against them"].)

Montoya appears to contend that the only evidence necessary on appellate review is the OBVSS video, stating, "upon careful viewing of [the video,] all will become [apparent]." But an appellant may not pick and choose portions of the record to demonstrate error. (*Jade Fashion, supra*, 229 Cal.App.4th at pp. 643-644.) Moreover, the jury was shown excerpts from the video during the trial and concluded that Transdev was not negligent. This court is without power to substitute its conclusions for the jury's. (*Five Feet, supra*, 107 Cal.App.4th at p. 143.)

We also reject Montoya's argument (raised for the first time in his reply brief) that Transdev failed to "present conclusive evidence of non [existent] injury." Arguments raised for the first time in a reply brief on appeal are forfeited. (*People v. Rangel* (2016) 62 Cal.4th 1192, 1218-1219.) Montoya's claim also lacks merit. As the plaintiff in the personal injury suit, it was Montoya's burden to establish the presence of injury, not Transdev's burden to establish lack of injury. (See *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205 [to establish negligence, *plaintiff* must prove duty, breach of duty, causation, and damages]; CACI No. 400 [where plaintiff claims he was harmed by

defendant's negligence, *plaintiff* must prove (1) that defendant was negligent; (2) that plaintiff was harmed; and (3) that defendant's negligence was a substantial factor in causing plaintiff's harm].)³ We therefore reject Montoya's contention regarding Transdev's purported failure to conclusively establish lack of injury.

II

Expert Witness Issues

Montoya contends his inability to afford an orthopedic expert witness prejudiced his ability to prevail at trial, and the court's denial of his request for a court-appointed expert therefore deprived him of the opportunity to litigate his case in violation of his equal protection and due process rights under the United States Constitution. In support of his claim he is entitled to a court-appointed expert, Montoya relies on Evidence Code section 730.

³ To the extent Montoya now claims the jury should have considered the doctrine of *res ipsa loquitur*, shifting the burden to Transdev to establish it was not negligent (see CACI No. 417), there is no indication in the record that Montoya requested this instruction. Montoya does not dispute that the jury was properly instructed on general principles of negligence. Having failed to request the *res ipsa loquitur* instruction at trial, he has forfeited any claim of error on this ground. (See *Suman v. BMW of North America, Inc.* (1994) 23 Cal.App.4th 1, 9 ["[w]hen a trial court gives a jury instruction which is correct as far as it goes but which is too general or is incomplete for the state of the evidence, a failure to request an additional or a qualifying instruction will waive a party's right to later complain on appeal about the instruction which was given"].)

Evidence Code section 730 authorizes the trial court to appoint experts to investigate, report, or testify, either on the court's own motion or on motion of any party.⁴ This statute does not confer an absolute right to have an expert appointed in a civil action, but rather leaves the matter to the trial court's discretion. (*Pink v. Slater* (1955) 131 Cal.App.2d 816, 817-818 [construing former section 1871 of the Code of Civil Procedure, the precursor to Evidence Code section 730]; see Wegner, et al., Cal. Practice Guide: Civil Trials and Evidence (The Rutter Group 2018) ¶ 8:722, p. 8C-126 ["In practice, courts *rarely* use this power in civil cases."].) We review the court's decision to appoint an expert under Evidence Code section 730 for an abuse of discretion. (*In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 833, 835.)

Montoya has failed to demonstrate an abuse of discretion here. Based on the limited record before us, it appears the trial court denied Montoya's request for fees for a court-appointed expert on July 13, 2017, nearly three months before trial. The trial court informed Montoya he could request a court hearing to provide the court with more information supporting his request. There is no evidence in the record that Montoya availed himself of this opportunity. Even if he did, there is no record of how the trial

⁴ Evidence Code section 730 provides in relevant part: "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court." Montoya also relies on Federal Rule of Evidence 706, which is inapplicable here.

court evaluated any additional request. We are unable to conclude the trial court abused its discretion in denying Montoya's request for appointment of an expert under Evidence Code section 730.⁵

We also reject Montoya's contention that, because he did not have an expert orthopedic witness, the court erred in denying his request to introduce the expert report of the defense's designated expert orthopedic surgeon. The record reflects that, after Transdev's motion for nonsuit was granted as to punitive damages, Transdev informed the court it no longer intended to call this expert as a witness. Montoya then requested to introduce the expert's report as evidence.⁶ The court denied Montoya's request "based on hearsay" grounds. (See Evid. Code, § 1200, subd. (a) [" '[h]earsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated"]; *id.*, subd. (b) ["[e]xcept as provided by law, hearsay evidence is inadmissible"].)

⁵ We also reject Montoya's cursory constitutional claims. Although Montoya cites cases purportedly standing for the principle that courts are authorized to appoint experts in both civil and criminal cases, Montoya provides no reasoned argument to support his claim that his constitutional rights were violated here. His undeveloped and unsupported argument that his due process and equal protection rights were violated is deemed forfeited. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 48.)

⁶ Montoya contends he also requested to compel the orthopedic expert to testify and this request was denied; however, this is not reflected in the minutes. Assuming this occurred, we would find no error on this ground. It is not apparent from the record that Montoya followed applicable procedures to call the defense expert as a witness at trial. (Code Civ. Proc., § 2034.310, subd. (a) [permitting a party to call an expert as a trial witness if that expert was designated by another party and was thereafter deposed].)

We apply " 'the abuse of discretion standard of review to any ruling by a trial court on the admissibility of evidence, including one that turns on the hearsay nature of the evidence in question [citations].' " (*People v. Zavala* (2013) 216 Cal.App.4th 242, 249; see *People v. Alvarez* (1996) 14 Cal.4th 155, 203 [in applying abuse of discretion standard, appellate court "examines the underlying determination whether the evidence was indeed hearsay"].)

Here, Montoya has failed to establish any grounds for admitting the expert report. (See, e.g., *Stockinger v. Feather River Community College* (2003) 111 Cal.App.4th 1014, 1027 [trial court properly excluded hearsay evidence where plaintiff made "no argument in her opening brief on appeal as to what possible exception to the hearsay rule would apply"], disapproved on other grounds in *Regents of Univ. of Cal. v. Superior Court* (2018) 4 Cal.5th 607, 634, fn. 7.) Nor can we discern, based on the record presented, a basis for admitting the report. To the contrary, "[d]ocuments like reports, criminal records, hospital records, and memoranda—prepared outside the courtroom and offered for the truth of the information they contain—are usually themselves hearsay and may contain multiple levels of hearsay, each of which is inadmissible unless covered by an exception." (*People v. Yates* (2018) 25 Cal.App.5th 474, 482.) The trial court acted well within its discretion in ruling the expert report was inadmissible hearsay. (See *People v. Landau* (2016) 246 Cal.App.4th 850, 874 ["The reports of nontestifying experts are hearsay."].)

III

In Limine Evidentiary Rulings

Transdev filed several motions in limine to exclude or limit evidence presented by Montoya at trial. Montoya contends the trial court abused its discretion with respect to various categories of evidence that were improperly excluded, amounting to prejudicial error at trial.

A. Additional Factual and Procedural Background

In motion in limine 3, Transdev sought to preclude Montoya or his neighbors and friends (i.e., his "non-expert" witnesses) from offering medical evidence, testimony or argument regarding the nature and extent of plaintiff's injuries, on the basis such evidence required testimony from a qualified expert. Montoya objected, stating, "It violates the First Amendment of the Constitution of the United States." The court granted the motion. Montoya now contends the exclusion of this medical evidence testimony violated his First Amendment free speech rights and amounted to suppression of evidence. Without identifying particular evidence he was precluded from introducing, he claims "there should have been [limited admissibility]."

In motion in limine 4, Transdev sought to exclude evidence of Montoya's past medical treatment and expenses.⁷ Montoya objected on the basis of "suppression of evidence." The court granted the motion, "except as to medical care immediately

⁷ Unlike the other motions in limine, motion in limine 4 does not appear in the record.

rendered following the accident." On appeal, without providing any analysis, Montoya simply cites *People v. Jennings* (1988) 46 Cal.3d 963, 975 (*Jennings*).⁸

In motion in limine 5, Transdev sought to exclude evidence of Montoya's future medical treatment and expenses on the ground that, given Montoya's complicated health history, issues relating to causation and medical damages could not be established with reasonable certainty without expert testimony. Montoya objected, stating "[C]osts yet to be determined." The court granted this motion. Montoya now claims this was error because the "injury still [exists] to this day."

In motion in limine 7, Transdev sought to preclude Montoya from presenting evidence of a breach of duty by the bus operator on the ground that such evidence could not be established without expert testimony. Montoya objected, stating, "[S]uppression of evidence[;] the truth is on the [video;] violation of First [Amendment]." The court granted this motion and made the following comment (reflected in the court minutes): "[P]laintiff cannot argue that a bus cannot move until all passengers are seated." Without identifying particular evidence he was precluded from introducing, Montoya now argues, "[M]y argument was not about [having] to be seated prior to bus movement, my

⁸ Montoya erroneously cited "*People v. Jennings* (1988) 45 Cal.3d 903, 975." *Jennings* was an automatic appeal to the Supreme Court from a death sentence. If Montoya cited *Jennings* for its discussion regarding preservation of claims relating to evidentiary in limine rulings, the case is inapposite. Transdev is not contending Montoya forfeited his claims by failing to object. If Montoya instead cited *Jennings* because the defendant filed a motion to suppress, the case has no bearing here. It involved a motion to suppress evidence allegedly obtained in violation of a defendant's rights under *Miranda v. Arizona* (1966) 384 U.S. 436. The case does not support Montoya's "suppression of evidence" objection to the trial court's in limine ruling.

argument was about a violent fall due to the unexpected sudden acceleration [movement] of the bus which was the proximate cause of my injury, to which there is [substantial] substantive evidence."

In motion in limine 9, Transdev sought to exclude evidence, argument, or testimony regarding unrelated prior or subsequent incidents on public transit buses, arguing unrelated incidents were irrelevant and subject to exclusion under Evidence Code sections 350 and 352. Montoya objected, asserting First Amendment free speech grounds and "suppression of evidence." The court granted the motion. Again without identifying particular evidence he was precluded from introducing, Montoya contends the evidence was relevant to establish "a possible propensity."

Transdev argues that these evidentiary rulings were within the sound discretion of the trial court, and much of the evidence was properly excluded as a result of Montoya's failure to designate any medical or professional experts to testify as to duty, causation, or damages. Transdev argues that Montoya's health history, including his prior disability, and the unrelated prior car accident rendered the issues of causation, damages, and apportionment extraordinarily complex, and as such, expert testimony regarding those issues was necessary.

B. Applicable Law

" In limine motions are designed to facilitate the management of a case, generally by deciding difficult evidentiary issues in advance of trial. " The usual purpose of motions in limine is to preclude the presentation of evidence deemed inadmissible and prejudicial by the moving party. A typical order in limine excludes the challenged

evidence and directs counsel, parties, and witnesses not to refer to the excluded matters during trial.' " " " (*Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 375, italics omitted.) "As rulings on the admissibility of evidence, [in limine rulings] are subject to review on appeal for abuse of discretion." (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269.) "Accordingly, an in limine ruling to keep particular items of evidence from the jury is subject to reversal only where the trial court exceeded the bounds of reason. [Citation.] In other words, the appellate court will not disturb the trial court's decision unless the trial court exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination." (*Ceja v. Dept. of Transportation* (2011) 201 Cal.App.4th 1475, 1481.)

C. Analysis

With the exception of motion in limine 7, Montoya fails to explain what evidence he intended to introduce but was precluded from introducing as a result of the in limine rulings, nor does he provide any meaningful authority or argument explaining why such evidence should have been permitted to be introduced.⁹ Moreover, the appellate record is devoid of the evidence adduced at trial as well as the parties' oral arguments regarding the evidentiary exclusions. As such, Montoya has failed to affirmatively demonstrate error, and this alone is sufficient ground to affirm the trial court's evidentiary rulings.

(See *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573 ["[p]erhaps the most

⁹ Regarding motion in limine 7, Montoya was precluded from arguing the bus could not move until all passengers were seated, but now states his argument "was not about [having] to be seated prior to bus movement, [it] was about a violent fall due to the unexpected sudden acceleration [movement] of the bus."

fundamental rule of appellate law is that the judgment challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error"].) Even if we consider the merits of the in limine rulings, we are unable to discern any abuse of discretion on this limited record.

In its motion submitted to the trial court, Transdev argued that opinion testimony regarding a bus operator's standard of care required testimony from a qualified expert witness regarding the industry standards and practices for public transit operations. (See Evid. Code, § 801, subd. (a) [an expert witness's opinion testimony "is limited to such an opinion as is: (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact"].) In negligence cases, a plaintiff often must present expert testimony to establish that a defendant violated the appropriate standard of care. (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606.) We find no error in the trial court's determination (implicit in the record) that the appropriate standard of care for operating a public transit bus "is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code, § 801, subd. (a).)

We similarly find no error in the trial court's apparent determination that, under the circumstances of this case, expert testimony was required to establish causation for Montoya's medical damages. (See, e.g., *Webster v. Claremont Yoga* (2018) 26 Cal.App.5th 284, 290 [where the complexity of the causation issue is beyond common experience, expert testimony is required to establish causation]; Civ. Code, § 3283 [allowing recovery of damages for losses "certain to result in the future"]; *Garcia v. Duro Dyne Corp.* (2007) 156 Cal.App.4th 92, 97 ["[c]ourts have interpreted [Civil Code

section 3283] to mean that a plaintiff may recover if the detriment is '*reasonably certain*' to occur"], italics added.)

We therefore conclude that, with respect to motions in limine 3, 4, 5, and 7, Montoya has not established the trial court abused its discretion by precluding nonexpert, percipient witnesses from testifying on the grounds they were either (1) not qualified to testify as experts,¹⁰ or (2) unable to provide relevant, nonspeculative evidence that Montoya's medical condition was reasonably certain to result in future economic damages. (*Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, 1151 [damages award cannot be based on speculative evidence].)

We further conclude Montoya has failed to establish error regarding motions in limine 4 and 9. Evidence precluded pursuant to these motions—including Montoya's past medical expenses and unrelated public transit incidents—has questionable relevance based on this record and is further subject to exclusion under Evidence Code section 352, which permits a court in its discretion to "exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

¹⁰ A person is qualified to testify as an expert only "if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert," (Evid. Code, § 720, subd. (a)) and "may be shown by any otherwise admissible evidence, including his own testimony" (*id.*, subd. (b)).

In sum, Montoya has failed to establish an abuse of discretion as to any of the trial court's evidentiary rulings. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [" 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' "]; *Ballard, supra*, 41 Cal.3d at p. 574 ["a party challenging a judgment has the burden of showing reversible error by an adequate record"].)

IV

Jury Instructions Precluding a Punitive Damages Award

After Montoya rested his case, Transdev moved for nonsuit as to punitive damages, economic damages, and future noneconomic damages. The trial court granted the motion and concluded that "[a]ll that remains for the jury to decide, if liability is found, [is] the nature and [extent] of past non-economic damages." The jury was instructed: "You must not include in your award any damages to punish or make an example of Transdev Services, Inc. Such damages would be punitive damages, and they cannot be part of your verdict. You must award only the damages that fairly compensate Manuel R. Montoya for his loss." (See CACI No. 3924.)

Montoya now argues that it was error for the trial court to instruct the jury not to include an award of punitive damages. We disagree.

As our Supreme Court held, "there is no rule of automatic reversal or 'inherent' prejudice applicable to any category of civil instructional error, whether of commission

or omission." (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580.) Even if instructional error is identified, the resulting judgment is reversed only if, " 'after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.' (Cal. Const., art. VI, § 13.)" (*Soule*, at p. 580.) "We review de novo whether a challenged instruction correctly states the law." (*Bowman v. Wyatt* (2010) 186 Cal.App.4th 286, 298.) We review the claim an instruction lacked supporting evidence under the substantial evidence test. (*Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 992, overruled on other grounds in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664.)

Here, the trial court's instruction was correct as a matter of law. Having granted a nonsuit on the issue of punitive damages, the trial court correctly instructed the jury it could not award such damages. (See CACI No. 3924.) To the extent Montoya is challenging the underlying ruling granting nonsuit on the issue of punitive damages, his claim likewise fails.

In a civil case not arising from the breach of a contractual obligation, a plaintiff may recover punitive damages "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice" (Civ. Code, § 3294, subd. (a).) "A nonsuit is proper only if there is no substantial evidence to support a jury verdict in the plaintiff's favor." (*Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 58 (*Hoch*).) "[A] nonsuit on the issue of punitive damages is proper when no reasonable jury could find the plaintiff's evidence to be clear and convincing proof of malice, fraud

or oppression. On review of a nonsuit order, we apply the same standard." (*Id.* at pp. 60-61; *Stewart v. Truck Ins. Exchange* (1993) 17 Cal.App.4th 468, 482 [plaintiff has burden of presenting "clear and convincing" evidence to support award of punitive damages, and both trial court and appellate court must view evidence "with that higher burden in mind"].)

Without any record of the trial testimony or other evidence considered by the trial court, we cannot determine whether a reasonable jury could find clear and convincing proof of malice, fraud, or oppression. (*Hoch, supra*, 24 Cal.App.4th at pp. 60-61.) The trial court in this case determined the evidence was not sufficient to support a jury verdict in Montoya's favor on the issue of punitive damages. (See, e.g., *Barry v. Raskov* (1991) 232 Cal.App.3d 447, 458 [nonsuit on punitive damages affirmed because "[t]he trial court found, correctly, the evidence [of fraud] was not 'clear and convincing' "]; *Romo v. Southern Pac. Transportation Co.* (1977) 71 Cal.App.3d 909, 919 [rejecting plaintiff's charge of error in trial court's refusal to instruct on punitive damages where there was no substantial evidence to support the instruction].) Because the trial court's judgment is presumed correct absent evidence to the contrary, we reject Montoya's claim of error. (*Jameson, supra*, 5 Cal.5th at p. 609 ["[f]ailure to provide an adequate record on an issue requires that the issue be resolved against [the appellant]"].)

V

Special Verdict Form

Montoya contends the special verdict form utilized in this case was unjust and unfair. The special verdict form presented to the jury provided as follows:

"Question No. 1: Was Transdev Services, Inc. negligent?

"Answer: YES _____ NO _____

"If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

"Question No. 2: Was Transdev Services, Inc.'s negligence a substantial factor in causing harm to Manuel R. Montoya?

"Answer: YES _____ NO _____

"If your answer to question 2 is yes, then answer question 3. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

"Question No. 3: What are Manuel R. Montoya's total damages? Do not reduce the damages based on the fault, if any, of Manuel R. Montoya.

"Answer: (a) Past non-economic loss, including physical pain/mental suffering: \$_____. Total: \$_____.

"If Manuel R. Montoya has proved any damages, then answer question 4. If Manuel R. Montoya has not proved any damages, then stop here, answer no further questions, and have the presiding juror sign and date this form.

"Question No. 4: Was Manuel R. Montoya negligent?

"Answer: YES _____ NO _____

"If your answer to question 4 is yes, then answer question 5. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

"Question No. 5: Was Manuel R. Montoya's negligence a substantial factor in causing his harm?

"Answer: YES _____ NO _____

"If your answer to question 5 is yes, then answer question 6. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.

"Question No. 6: What percentage of responsibility for Manuel R. Montoya's harm do you assign to:

Transdev Services, Inc:	____%
Manuel R. Montoya:	____%
TOTAL	100%

"Please have the presiding juror sign and date this form and return it to the bailiff."

The jury found the answer to the first question ("Was Transdev Services, Inc. negligent?") was "no," and, consistent with the verdict's instructions, the jurors answered no additional questions.

Montoya's grounds for challenging the special verdict form are unclear. He contends that the primary issue in his complaint was "personal injury"—not negligence—and the verdict form thus improperly "[exonerated] the [defense] from all other issues relevant to the case, including liability [and] personal injury, to name a few . . . [and] [including] 'proximate cause.' " Further, he contends the special verdict form did not resolve all the factual issues.

"[A] special verdict is that by which the jury finds the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the Court but to draw from them conclusions of law." (Code Civ. Proc., § 624.) "A special verdict is 'fatally defective' if it does not allow the jury to resolve every controverted issue." (*Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 325 (*Saxena*).) " 'We analyze the special verdict form de novo' as a matter of law." (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1242.)

However, where the alleged defect was apparent at the time the verdict was rendered, a party who fails to object and request clarification or further deliberation forfeits his claim that the special verdict was defective. (*Ibid.*)

Montoya has not shown that he objected to the special verdict form used by the trial court. Montoya merely claims he objected to Transdev's version of the verdict form, and for this reason he did not sign the joint trial readiness conference report. But all the joint trial readiness conference stated was, "Plaintiff and Defendant reserves [sic] the right to submit a special verdict form at the time of trial." Even if Montoya preserved his claim of error, his argument lacks merit.

Based on our review of the complaint, the instructions, and the special verdict form, we conclude there was no error here. The complaint asserts a single cause of action for negligence that purportedly resulted in his personal injury.

The jury was instructed with CACI No. 400 as follows: "Manuel R. Montoya claims that he was harmed by Transdev Services, Inc.'s negligence. To establish this claim, Manuel R. Montoya must prove all of the following: [¶] 1. That Transdev Services, Inc. was negligent; [¶] 2. That Manuel R. Montoya was harmed; and [¶] 3. That Transdev Services, Inc.'s negligence was a substantial factor in causing Manuel R. Montoya's harm." The jury was also instructed with CACI No. 401, regarding basic standard of care, as follows: "Negligence is the failure to use reasonable care to prevent harm to oneself or to others. [¶] A person can be negligent by acting or by failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person

would do in the same situation. [¶] You must decide how a reasonably careful person would have acted in Transdev Services, Inc.'s situation." The jury was further instructed with CACI No. 600: "A bus operator is negligent if he fails to use the skill and care that a reasonably careful bus operator would have used in similar circumstances. This level of skill, knowledge, and care is sometimes referred to as 'the standard of care.' [¶] You must determine the level of skill and care that a reasonably careful bus operator would use in similar circumstances based only on the testimony of the expert witnesses, including [Transdev's expert regarding bus operations], who has testified in this case."

The special verdict form used by the trial court is nearly identical to model verdict form CACI No. VF-401, approved by the Judicial Council of California. Consistent with the jury instructions, which Montoya does not challenge, the jury's determination in question number 1 that Transdev was not negligent encompassed findings regarding duty, breach, causation, and injury—i.e., all the required elements for negligence. (See *Phillips, supra*, 172 Cal.App.4th at p. 1139 [setting forth elements of a cause of action for negligence].)

In sum, the jury was permitted to determine the controverted issues framed by the single negligence cause of action at issue here. (*Saxena, supra*, 159 Cal.App.4th at p. 325.) The jury's determination on negligence was dispositive of his single claim for relief. Montoya has failed to establish the verdict form was erroneous or prejudicial.

VI

Jury Misconduct

Montoya argues that the jury's short (14-minute) deliberation and prompt delivery of a defense verdict demonstrate "the jury did not pay attention to [the jury] instructions." We presume jurors follow the trial court's instructions. (*People v. Houston* (2012) 54 Cal.4th 1186, 1211.) Montoya's complaint regarding the short deliberation does not rebut this presumption.

This court rejected a similar claim of jury misconduct in *Vomaska v. City of San Diego* (1997) 55 Cal.App.4th 905 (*Vomaska*). In that case, the jury returned a defense verdict in a personal injury action within 10 to 15 minutes—before the trial exhibits were delivered to the jury room—and jurors subsequently submitted affidavits stating there was no discussion of their individual views, only a vote on the first question on the special verdict form. (*Id.* at pp. 909, 913.) We rejected any claim of impropriety, noting that, under the Code of Civil Procedure, "there is nothing impermissible in simply taking a vote and rendering a verdict if the jury chooses to do so." (*Vomaska*, at p. 910.)

Just as there was no juror misconduct in *Vomaska*, Montoya's claim of juror misconduct fails here. The court's minutes reflect the jury was present for all the trial testimony, and the trial court instructed them on the law and their duties as jurors. After deliberating for a short period of time, the jury returned a completed special verdict form. The brevity of the jury's deliberations does not support Montoya's claim of misconduct. (*Vomaska, supra*, 55 Cal.App.4th at pp. 909-911.)

VII

Costs Award

Finally, Montoya challenges the costs award, stating:

"The [aggravating] thought that after my injury, which is still as real, the stress[,] the emotion, the [aggravation], the [inconvenience], the pain, the suffering, [having] to now use [physical] assist[ance], the [embarrassment] of my [physical] abilities [among] numerous other related issues[,] [I] am now expected to pay [Transdev] \$12,241.92 [in costs] for a trial that was in no way fair or dealt with in the [sense] of justice for all[,] indigent or not, is [absolutely] [appalling] to me[.]"

"[A] prevailing party is entitled as a matter of right to recover costs in any action or proceeding." (Code Civ. Proc., § 1032, subd. (b).) Montoya provides no support or authority for his current challenge to the costs award, nor has he shown he objected to or opposed Transdev's memorandum of costs in the trial court. Montoya has forfeited any challenge to the award of costs. (See *Sviridov v. City of San Diego* (2017)

14 Cal.App.5th 514, 521 [party's failure to provide any analysis or citation to legal authority in support of "perfunctory" challenge to costs award forfeits claim on appeal]; *Pas v. Hill* (1978) 87 Cal.App.3d 521, 531-532 [failure to object to procedure for determining costs or resulting costs award results in waiver of objections thereto], overruled on other grounds, *Saucedo v. Mercury Savings & Loan Assn.* (1980) 111 Cal.App.3d 309, 315.)

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

GUERRERO, J.

WE CONCUR:

NARES, Acting P. J.

O'ROURKE, J.